

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOHN E. FOSTER,	§
	§ No. 566, 2011
Defendant Below,	§
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware, in and
STATE OF DELAWARE,	§ for New Castle County
	§ Cr. ID 0703031898
Plaintiff Below,	§
Appellee.	§

Submitted: November 14, 2011

Decided: January 3, 2012

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

ORDER

This 3rd day of January 2012, upon consideration of the appellant's opening brief and the State's motion to affirm, it appears to the Court that:

(1) The appellant, John Foster, filed this appeal from the Superior Court's denial of his motion for correction of sentence under Superior Court Criminal Rule 35(a). The State has filed a motion to affirm the judgment below on the ground that it is manifest on the face of the opening brief that the appeal is without merit. We agree and affirm.

(2) The record reflects that a Superior Court jury convicted Foster in 2007 of one count each of second degree burglary and second degree robbery. He was declared a habitual offender under 11 Del. C. § 4214(a) and was sentenced to ten

years at Level V incarceration for the burglary charge and to eight years at level V incarceration for the robbery charge. His eight year sentence was later reduced to seven years. His convictions were affirmed on appeal.¹ In August 2011, Foster filed a motion seeking correction of illegal sentence, which the Superior Court denied. This appeal followed.

(3) Foster's sole argument on appeal is that his sentence for second degree robbery is illegal because it exceeded the five year statutory maximum sentence. Foster's argument, however, is based on a misreading of the habitual offender statute pursuant to which he was sentenced.

(4) The Superior Court sentenced Foster as a habitual offender on his second robbery conviction pursuant to 11 Del. C. § 4214(a). Section 4214(a) provides, among other things, that any person who has been three times convicted of a felony, other than the violent felonies identified in § 4214(b), who is thereafter convicted of a subsequent felony shall be declared a habitual offender, and the Superior Court shall have discretion to impose a sentence of up to life imprisonment.² In this case, Foster received a seven-year sentence on his second degree robbery conviction.

(5) Foster argues that second degree robbery is not one of the violent felonies identified in § 4214(b) and, thus, he could not be declared a habitual

¹ *Foster v. State*, 961 A.2d 526 (Del. 2008).

² DEL. CODE ANN. tit. 11, § 4214(a) (2007).

offender pursuant to § 4214(a). Foster's reading of the statute is simply wrong. Section 4214(a) provides that, for a fourth conviction of *any* felony *not* listed in § 4214(b), a defendant may receive a sentence of up to life imprisonment. Foster was properly declared a habitual offender under § 4214(a) based on his prior record, and his seven-year sentence for second degree robbery was within the range of authorized sentences. Accordingly, the Superior Court did not err in denying his motion for correction of illegal sentence.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice